

School & Contractor Criminal History Record Information Working Relationship

The New Criminal History Record
Information Process

Where It Begins

Criminal History Record Information (CHRI) contains federal information shared with authorized entities for the purpose of licensing and hiring determinations.

The FBI are the data owners of federal CHRI received for this purpose; and are responsible for providing guidelines on access, receipt, and dissemination of CHRI. Per Public Law 92-544 CHRI is only to be sent to a governmental agency.

The Michigan State Police (MSP) is the repository for the state of Michigan and charged with the responsibility to oversee CHRI access, receipt, and dissemination in Michigan.

Schools

Michigan schools are considered an authorized recipient of CHRI. An Authorized Recipient (AR) is an agency that is legally authorized by law (state or federal) to receive a national fingerprint CHRI background check response from the FBI.

Schools need to maintain three pieces of documentation for each contracted employee assigned within their school.

- Position Description (red light/green light letter)
- Consent (livescan form)
- CHRI

Contractor

Contractors may continue managing contracted employees; however, a fingerprint CHRI background check can only be completed by the authorized school. Contractors can:

- Still solicit individuals for employment.
- Still provide, collect, and maintain hiring documents/packets pertaining to the applicant (excluding CHRI).
- Still send applicants for fingerprinting (with authorized school agency permission).
- Still maintain and enforce any additional contractor employee screening requirements.

Quick Question

Does the MSP realize that these contracted employees are not the school's employees?

Yes, per MCL 380.1230a... “(1)In addition to the criminal history check required under section 1230, the board of a school district or intermediate school district or the governing body of a public school academy or nonpublic school shall request the department of state police to conduct a criminal records check through the federal bureau of investigation on an applicant for, or an individual who is hired for, any full-time or part-time employment *or who is assigned to regularly and continuously work under contract in any of its schools.*”

Red Light/Green Light

(1 of 2)

Per federal law Title 28 § 20.21 “No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”

Therefore, these letters have to be written in such a way that no indication of the employment decision was made based on details from the CHRI response. Therefore, refrain from using the following words or phrases in these letters:

- A criminal background check
- A state and federal criminal check
- A fingerprint background check

Red Light/Green Light

(2 of 2)

A red light/green light template is provided at the MSP website for your use, www.michigan.gov/cjicats

While it **is not mandatory** for schools to complete the template, it is beneficial for many reasons; one being “position description.” As schools are required to retain a position description as part of supporting documentation during a compliance audit review, the template will meet this requirement.

The template provides for the applicant’s name and the position offered/assigned.

[AGENCY NAME]

DETERMINATION FOR ASSIGNMENT

(L Name, F Name Middle Initial)

(Contact Number)

(Position Assigned)

Based on the information we have obtained on the above named individual, we are making the following determination:

_____ Yes, the individual is cleared to work in a Michigan school.

_____ Yes, the individual is cleared to work in a Michigan school. However, based on additional district/school policy and guidelines of [AGENCY NAME], we will not be accepting the individual for assignment at our district/school.

_____ No, the individual is not cleared to work in a Michigan school.

I state I am authorized to make this determination for our district and have based my determination on current district/school policies and guidelines and current Michigan law. I understand that I am responsible to notify [CONTRACTING ENTITY] in writing if there is a change in this determination.

Printed Name & Title

Signature

Approval Date

“Red light/Green Light” Template

CHRI Process Example

(1 of 2)

An authorized school or clearinghouse school, may request all contractor fingerprint checks for their own school or consortium school districts (CSD).

- Applicant will complete orientation and the initial hiring process with the authorized school or contractor. The applicant will then be instructed to go through the authorized school's or clearinghouse school fingerprint background check process.
- Applicant will be provided with the Livescan (RI-030) form to complete and return to the authorized school or clearinghouse school upon fingerprint completion.

CHRI Process Example

(2 of 2)

- The authorized school or clearinghouse school receives CHRI response via e-mail and/or U.S. Postal Services. The authorized school or clearinghouse will review the CHRI response and determine if the applicant is cleared/not cleared to be assigned to the authorized school or within CSD. The authorized school or clearinghouse school will provide the notice of their decision to the contractor by means of a red light/green light letter.
- The authorized school or clearinghouse school maintains a copy of the red light/green light letter and the Livescan form for compliance audit purposes.

Conditional Employment & Individual Consent

Per MCL 380.1230a(2), the school may request and place an individual for employment prior to obtaining the CHRI response, so long as the CHRI is requested and a disclosure form of all crimes committed is obtained from the individual.

- Disclosure forms should already be part of the applicant hiring process as it is required by law. Disclosure forms may be obtained from the Michigan Department of Education (MDE).

Before a school can share a CHRI response with another school, a signed release from the individual has to be obtained prior to sharing (MCL 380.1230a(4) & (5) and when applicable Title 5 § 552a).

- As an option, clearinghouse school may consider establishing a “Blanket Release” form. The form would be signed by the applicant during the hiring process indicating their permission (should the need arise and an assignment available) for the clearinghouse school to share the individuals CHRI with a CSD.

Conviction Disclosure Form

Conviction Disclosure Form

Name _____ Date of Birth _____ (Please Print)
Address _____ (Please Print)
City _____ State _____ Zip _____ (Please Print)
School/District Name _____ (Please Print)
Position _____ (Please Print)

Pursuant to Public Act 138 of 2005, I represent that (check all that apply):

- ___ 1. I have not been convicted of, or pled guilty or nolo contendere (no contest) or is the subject of a finding of guilt by a judge or jury of any crime.
- ___ 2. This is my initial disclosure. I have been convicted of, or pled guilty or nolo contendere (no contest) or am the subject of a finding of guilt by a judge or jury for the following crimes (attach a separate sheet of paper to explain the criminal offense date, court, city/state, and circumstances surrounding the conviction):
- | | | |
|------------|-----------------|----------------|
| ___ Felony | ___ Misdemeanor | Conviction for |
| ___ Felony | ___ Misdemeanor | Conviction for |
| ___ Felony | ___ Misdemeanor | Conviction for |
- ___ 3. This serves as disclosure of subsequent convictions for which I have been convicted of, or pled guilty or nolo contendere (no contest) or am the subject of a finding of guilt by a judge or jury for the following crimes (attach a separate sheet of paper to explain the criminal offense, date, court, city/state, and circumstances surrounding the conviction), and I understand that failure to disclose any subsequent convictions is considered to be a crime:
- | | | |
|------------|-----------------|----------------|
| ___ Felony | ___ Misdemeanor | Conviction for |
| ___ Felony | ___ Misdemeanor | Conviction for |
| ___ Felony | ___ Misdemeanor | Conviction for |

In Signing this form, I understand and agree that:

4. if I have been convicted of a A Listed Offense, my employment shall be terminated. I also understand that if I have been convicted of a felony, other than a A Listed Offense, the superintendent, or chief administrator and the board or governing body must each approve, in writing, my employment or work assignment.

Conviction Disclosure Form Page Two

5. Until the criminal history report is received and reviewed by the employing school/district, I am regarded as a conditional employee and if the criminal history report is not the same as my representation(s) above, my employment contract is voidable at the option of the school.

Signature _____ Date _____

Return Form to Human Resources Department of the employing school district

Disclosure forms can be obtained from the MDE

This CHRI process example is an option only. Individual agencies are responsible for adhering to all state and federal laws. Therefore, agencies are recommended to contact your school or district legal advisor prior to implementing changes solely based on this example provided by the MSP, as he or she may have additional information to provide pertaining to all areas of your school and contractor working relationships.

Thank you...

Your time and patience is appreciated!